

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

JOSE ESPINOZA,)
)
Plaintiff,)
)
-vs-) Case No. CIV-16-0055-F
)
J. BREWSTER, et al.,)
)
Defendants.)

ORDER

On April 5, 2016, Magistrate Judge Gary M. Purcell issued a Report and Recommendation (the Report), doc. no. 20, in this civil rights action brought by a California state prisoner pursuant to 42 U.S.C. § 1983. Plaintiff appears *pro se* and his pleadings are liberally construed. Upon initial screening, the Magistrate Judge recommends this action be dismissed pursuant to 28 U.S.C. §§1915(e)(2)(B) and 1915A(b), for failure to state a claim upon which relief may be granted. The Report also recommends that the court decline to exercise supplemental jurisdiction over the state law tort claims.

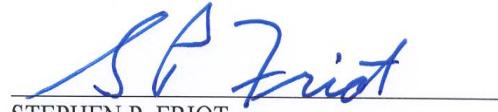
Plaintiff has filed lengthy objections to the Report. Doc. no. 25. Some are broad while others are quite specific such as objections taking issue with the accuracy of certain statements in the Report.¹ The court has reviewed all objections *de novo*.

¹To cite one example, plaintiff objects (doc. no. 25, p. 11 of 43) to the Report's statement (doc. no. 20, p. 8) that a nurse noted an eye exam showed plaintiff to have near perfect vision. The records cited in the Report (amended complaint, doc. no. 18, Ex. C., p. 12) indicate plaintiff's vision was 20/30 (right eye) and 20/25 (left eye). Thus, while the Report did not use the exact words which appear in the medical reports, the Report accurately characterizes the records.

Having done so, the court concludes the objections are not meritorious and that there is nothing to be gained from further discussion of them here.

After review, plaintiff's objections are **DENIED**; and the Report and Recommendation of the Magistrate Judge is **ACCEPTED, ADOPTED** with one minor amendment,² and **AFFIRMED**. As recommended in the Report, this federal action alleging claims under 42 U.S.C. § 1983 is **DISMISSED** pursuant to 28 U.S.C. §§1915(e)(2)(B) and 1915A(b), for failure to state a claim upon which relief can be granted. The court declines supplemental jurisdiction over plaintiff's tort claims, which are **DISMISSED** for that reason. Accordingly, this action is **DISMISSED** in its entirety. Plaintiff is reminded that a dismissal pursuant to §1915(e)(2)(B) or 1915A(b) may constitute one "strike" pursuant to 28 U.S.C. §1915(g), upon affirmance or waiver of the opportunity to appeal.

Dated this 11th day of July, 2016.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

16-0055p003.wpd

²The Report's statement (doc. no. 20, p. 20) that the action is dismissed as frivolous is deleted from the Report, as adopted. The court makes no finding one way or the other about frivolousness.